

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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On its Own Motion	:	
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Certification Requirements Applicable to	:	12-0212
Vendors that Install Electric Vehicle	:	
Charging Stations	:	
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**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
VERIFIED REPLY COMMENTS**

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, respectfully submits its Verified Reply Comments ("Staff's Comments") in support of a proposed Illinois Commerce Commission ("Commission") rule establishing certification requirements for entities installing, maintaining or repairing Electric Vehicle ("EV") charging stations.

I. BACKGROUND

On October 31, 2011, Public Act 97-0616 ("PA 97-0616") became effective. Among other things, PA 97-0616 added Section 16-128A to the Public Utilities Act ("Act"). Section 16-128A was subsequently amended by Public Act 97-1128 on August 28, 2012. Section 16-128A(d) requires the Commission to establish certification rules applicable to installers, maintainers and repairers of EV charging stations: "Within 180 days after the effective date of this amendatory Act of the 97th General Assembly, the Commission shall initiate a rulemaking proceeding to establish certification requirements that shall be applicable to persons or entities that install, maintain, or repair electric vehicle charging stations." 220 ILCS 5/16-128A(d).

On March 12, 2012, Staff filed a report recommending that the Commission open a rulemaking proceeding to adopt EV charging station certification rules. The Commission opened the proceeding on March 21, 2012.

Staff drafted and solicited written comments on an initial proposed certification rule that Staff refers to as the “IMR Rule” (i.e., “Installer, Maintainer, and Repairer Rule”). Staff then convened three workshops to discuss the written comments and subsequently revise draft rules. The attached proposed draft IMR Rule takes into consideration the comments and workshop discussions; however, some portions of the draft IMR Rule may reflect Staff’s recommendations only.

The proposed IMR rule is generally modeled after other Commission energy-related certification/licensing rules contained in Title 83 of the Illinois Administrative Code and pending rules, including Part 451 (Certification of Alternative Retail Electric Suppliers) (83 Ill. Adm. Code 451), Part 454 (Licensure of Retail Electric Agents, Brokers and Consultants) (Ill. Adm. Code 454); Part 551 (Certification of Alternative Gas Suppliers) (Ill. Adm. Code 551); and, the pending Distributed Generation certification rule that is presently under consideration in Docket No. 12-0213. Staff notes that under these rules certification/licensing applications are filed with the Commission’s Chief Clerk’s Office, assigned to an Administrative Law Judge and approved or denied by the Commission. Staff recommends that a similar process be used for certification applications that are submitted under the IMR Rule.

The IMR Rule proposes that entities – i.e., businesses or individuals that are in the business of installing, maintaining or repairing electric vehicle charging stations – would apply for certification, rather than individual employees of those businesses.

However, an entity seeking certification must certify that only “Qualified persons,” as that term is defined in the proposed rule, or individuals that are supervised by qualified persons, would perform IMR installations. Individuals being supervised by qualified persons are required to have completed an apprenticeship as an electrician from a United States Department of Labor Registered Electrical Apprenticeship and Training Program and received a certification of satisfactory completion, or be enrolled in a registered Department of Labor electrical apprenticeship program.

II. REPLY COMMENTS

A. Response to Ameren and ComEd

Ameren and ComEd limit their initial comments to Section 469.120 (Obligations of Electric Utilities, IMRs and Retail Customers). Each utility proposes several changes to the rule.

i. Ameren

Ameren notes that Section 469.120 requires both IMRs and retail customers to notify the servicing utility of an EV installation. Ameren would prefer that it receive only a single notification and proposes that the notification come only from the retail customer. (Ameren Comments at 1-2)

Section 16-128A(d) sets forth the notification requirements. That section reads in part as follows:

All retail customers who own, maintain, or repair an electric vehicle charging station shall provide the servicing electric utility (i) a certification that the customer installing the electric vehicle charging station was a self-installer or (ii) evidence that the electric vehicle charging station was installed by an entity certified under this subsection (d) that is also in good standing with the Commission....

If the electric vehicle charging station was not installed by a self-installer, then the person or entity that plans to install the electric vehicle charging station shall provide notice to the servicing electric utility prior to installation and when installation is complete and provide any other information required by the Commission's rules established under subsection (d) of this Section. An electric utility shall file a tariff or tariffs with the Commission setting forth the documentation, as specified by Commission rule, that a retail customer who owns, uses, operates, or maintains an electric vehicle charging station must provide to an electric utility. (emphasis added)

Staff understands that Section 16-128A(d) requires *both* the IMR and retail customers to provide certain information to the servicing utility. Thus, Staff does not support Ameren's recommendation.

Ameren also states that the rule does not contain a "direct mechanism" to enforce the notification requirements that are imposed on IMRs and/or retail customers. On this basis, Ameren requests that Staff "consider avenues to incentivize utility notification by whichever entity or entities continue to maintain notification responsibilities." (Ameren Comments at 2) However, subsection b)5) of Section 469.150 (Certification Requirements) requires an applicant to certify that it will "Submit notifications to the servicing electric utility in accordance with the requirements specified in the applicable tariffs of the servicing electric utility, Section 16-128A of the Act, and this Part." Additionally, Section 469.90 (Commission Oversight) informs certificate holders that the Commission may investigate violations of the rule. Furthermore, Section 469.60 (Certifications Conditioned Upon Compliance) states that violation of the rule or the Act "make[s] the IMR subject to penalties, including certificate suspension, revocation, fines, or a combination of sanctions." Therefore, the possibility that an IMR

could be sanctioned for failing to provide notification provides sufficient incentive to ensure compliance.

ii. **ComEd**

ComEd proposes numerous changes to Section 469.120(a):

1. ComEd proposes that an installing entity provide the servicing utility with its business name, address and phone number to clarify the meaning of “contact information.” (ComEd Comments at 1) Staff agrees that this is a reasonable recommendation.

2. ComEd proposes a new subsection, Section 469.120(a)(1)(B). The new subsection would require the IMR to demonstrate that it has obtained Commission certification and is in good standing with the Commission. ComEd states that the purpose of the recommendation is to relieve the obligation on the utility to investigate the status of the IMR. (ComEd Comments at 2) However, Staff would like to point out that there does not appear to be a statutory requirement for this recommendation. Nevertheless, Staff does not oppose the recommendation since the IMR will be the entity first in contact with the utility prior to installation.

3. ComEd proposes to strike subsections 469.120(a)(1)(D), (E) and (F). These subsections require IMRs to provide to the utility information regarding the start and ending dates of the installation(s); the number of installations that are planned to be installed and the number actually installed; and, the name of the qualified person who performed the installation. In the alternative, ComEd proposes a new subsection 469.120(a)(1)(E) that would replace subsections (D), (E) and (F). ComEd notes that its

proposal would streamline the information a utility will need from an IMR and would serve to demonstrate that the work has been completed. (ComEd Comments at 2)

Staff understands ComEd's recommendation as eliminating the requirements that an IMR would be required to notify the utility of the intended installation date(s), the actual completion date(s), the number of installations performed and name of the qualified person who performed the installation(s). ComEd's recommendation would require that an IMR provide an invoice to the utility after installation is complete. Thus, ComEd's proposal would retain the requirement that the IMR inform the utility of the location of the installation and that an installation was completed, but it would not necessarily require information regarding the planned installation date and when the installation was completed.

The relevant section of Section 16-128A(d) reads as follows:

If the electric vehicle charging station was not installed by a self-installer, then the person or entity that plans to install the electric vehicle charging station shall provide notice to the servicing electric utility prior to installation and when installation is complete and provide any other information required by the Commission's rules established under subsection (d) of this Section.

It appears that ComEd believes that the requirement that the IMR notify the utility of the location of the installation would satisfy the statutory requirement of notification prior to installation. Likewise, ComEd appears to believe that the proposal that the IMR furnish an invoice would satisfy the statutory requirement that the installation was completed. It is Staff's position that this is a reasonable reading of Section 16-128A(d), and therefore, does not oppose ComEd's recommendation.

Additionally, ComEd also recommends that subsection (F) be deleted. Subsection (F) requires the IMR to furnish the name of the qualified person who

performed the installation. Staff disagrees and notes that the purpose of the information is to ensure that each installation is performed by a qualified person or a person enrolled in a DOL-registered electrician apprenticeship program who is directly supervised by a qualified person. (ComEd Comments at 2)

4. ComEd proposes to strike proposed subsection 469.120(a)(2)(C). ComEd states that “(T)his proposal streamlines the information a utility will need from an IMR.”¹ The provision that ComEd proposes to strike concerns the completion date of the installation. This information does not appear to be required by statute and Staff does not oppose ComEd’s recommendation. (ComEd Comments at 2)

Additionally, ComEd proposes to modify Section 469.120(a)(2)(C) to add language that the IMR be in good standing with the Commission. (ComEd Comments at 2) This recommendation is consistent with Section 16-128(A)(d), which states that a retail customer must supply “....(ii) evidence that the electric vehicle charging station was installed by an entity certified under this subsection (d) that is also in good standing with the Commission.” Staff does not oppose the recommendation.

5. ComEd proposes to amend Sections 120(a)(3) and (a)(4), which require the utility to maintain records for no less than three years after installation. ComEd cites to Section 16-128A(d) as support for the recommendation. (ComEd Comments at 2-3) Section 469.100 (Maintenance of Records) requires certificate holders to retain installation records for at least three years. Thus, installation information should be available to the Commission and Staff as long as the certificate holder remains in

¹ It appears that the paragraph should state the proposal would streamline the information that would be provided by a “retail customer” rather than an IMR.

business. The issue here is whether imposing the retention requirement on utilities is unreasonable. Staff is doubtful that requiring electric utilities to retain this information would be unduly burdensome, and therefore, opposes the recommendation.

iii. Proposed Revisions in Response to Ameren and Com Ed

The changes described above are reflected in the following proposed revisions to Section 469.120:

Section 469.120 Obligations of Electric Utilities, IMRs and Retail Customers

- a) Electric Utilities
 - 1) Each electric utility shall file a tariff or tariffs with the Commission setting forth the documentation that each IMR involved with the installation of an electric vehicle charging station in the electric utility's service territory must provide to an electric utility. The electric utility's tariffs shall require the following information from IMRs:
 - A) The business name, address and phone number of the entity that is the certificate holder. ~~The name and contact information of the certificate holder;~~
 - B) Evidence demonstrating that the IMR has been certified by the Commission and that the IMR is in good standing with the Commission;
 - C) The name and address of the retail customer on whose behalf the electric vehicle charging station is installed;
 - ~~DG)~~ The location of each electric vehicle charging station that the IMR plans to install;
 - ~~E-D)~~ A copy of the invoice for the installation services or other information demonstrating that the certificate holder installed the charging station ~~The intended date of the installation and number of charging stations planned for installation;~~
 - ~~F-E)~~ The actual completion date of the installation and number of charging stations actually installed;
 - ~~GF)~~ The name of the qualified persons who performed the installation;
 - ~~HG)~~ The load and technical specifications of the charging stations; and
 - ~~I-H)~~ Whether the charging station is for personal or commercial use.

- 2) The electric utility's tariffs shall require the following information from each retail customer who owns, uses, operates or maintains an electric vehicle charging station:
 - A) The location of the electric vehicle charging station;
 - B) The name, address, and electric utility account number of the retail customer who owns, uses, operates, or maintains the electric vehicle charging station; and,
 - ~~C) The completion date of the installation of the electric vehicle charging station; and,~~
 - CD) A certification that the electric vehicle charging station was installed by the retail customer as a self-installer, or evidence that the electric vehicle charging station was installed by a Commission-certified IMR [that is in good standing with the Commission](#).
- 3) Each electric utility shall ensure that documentation regarding installations of electric vehicle charging stations are retained for a period of not less than three calendar years after the calendar year in which they were created.
- 4) Each electric utility shall ensure that documentation regarding conversion of self-installed installations of electric vehicle charging stations to commercial use are retained for a period of not less than three calendar years after the calendar year in which they were created.

B. Response to ABCIL

The Associated Builders and Contractors, Illinois Chapters Inc. ("ABCIL") offers a number of recommendations for changes to various sections of the rule. Staff will reply to each comment, as Staff understands the comments; but, the task is made somewhat more difficult as ABCIL did not provide replacement language reflecting its recommendations. The Chamber of Commerce also filed limited comments, in which it noted that it supported all of the ABCIL's more detailed commentary. Staff, accordingly, will only reply to the ABCIL comments.

i. Apprenticeship and Preemption

ABCIL argues that Staff's proposed rule "creates independent State standards inconsistent with and not supported by federal law." (ABCIL Comments at 1-2, *citing* to

29 CFR 29.2.) This may be entirely true. It is at least Staff's view that the General Assembly is in fact requiring Staff to create independent State standards, regardless of whether they are consistent or inconsistent with or supported by federal law. In other words, ABCIL point is entirely immaterial.

If ABCIL is arguing preemption, and it appears that it is, then ABCIL must go to a court of competent jurisdiction to make that argument. The Commission is a creation of the General Assembly and bound by the acts of the General Assembly. Consequently, it is not free to preempt the directives of the General Assembly. *City of Chicago v. Illinois Commerce Commission*, 79 Ill. 2d 213, 217-18 (1980); *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, 203 Ill. App. 3d 424, 438 (1990). Simply put, the Commission derives all of its authority from the General Assembly and cannot preempt its directives.

ii. Definition of a 'Qualified Person'

ABCIL states that the definition of "qualified person" is unduly narrow and that there are other suitable means of training that would fulfill the legislative requirements. (ABCIL Comments at 1) It appears that ABCIL recommends that electrical contractors that have a current license from an Illinois municipality whose employees have passed an examination offered by Underwriters Laboratory (UL) should be eligible to receive certification. (*Id.*, at 2)

Under the rule, to receive certification an entity would be required to demonstrate and certify that its' employees are qualified persons. Thus, Staff understands ABCIL's proposal as recommending that an electrical contractor that has passed a UL-offered installation examination could be a qualified person.

Staff can accept ABCIL's recommendation and does not disagree that an electrical contractor that passes a sufficiently rigorous UL charging station installation examination could demonstrate a reasonable level of competence in installing charging stations. However, Staff does not agree that ABCIL's recommendation demonstrates that the electrical contractor would have actual experience installing charging stations. Thus, Staff recommends that, in addition to passing a UL-offered installation examination, the electrical contractor would also be required to furnish proof that it has installed a charging station under the direct supervision of a qualified person. If these recommendations were accepted, the change to the definition of qualified person would read as follows:

"Qualified person" means a person who performs installation, maintenance or repair of electric vehicle charging stations and who either (1) has completed an apprenticeship as a journeyman electrician from a United States Department of Labor Registered Electrician Apprenticeship and Training Program and received a certification of satisfactory completion or (2) is an electrical contractor who has a current license from at least one Illinois municipality, who has passed a charging station installation examination offered by Underwriters Laboratory (UL) and who has successfully installed at least one charging station under the direct supervision of a qualified person.

iii. Application Information

ABCIL also offers recommendations for changes to Section 469.40 (Required Application Information). ABCIL states that there is "(N)o basis for the requirement that contractors submit employee-specific information along with details about its organizational structure." (ABCIL Comments at 2) In response, Staff notes that an entity must demonstrate that the employees that will install charging stations are qualified persons. An applicant must furnish employee-specific information to make

such a demonstration, and Staff believes such information is essential for the Commission's review of an entity's certification application. Thus, Staff opposes this recommendation. However, Staff can accept the recommendation that an applicant need not be required to provide information about its organizational structure. Thus, Staff recommends deleting subsections (f) and (g) of Section 469.40, as follows:

- ~~f) An organizational chart demonstrating the applicant's corporate structure, including all affiliated companies, if applicable.~~
- ~~g) An exhibit (with any confidential personal information such as a Social Security number redacted) containing an internal corporate organizational chart indicating the position and name of the qualified persons who will perform or directly supervise installations, maintenance and repair of electric vehicle charging stations to satisfy the requirements of this Part.~~
- fh) Copies of the DOL certification of satisfactory completion of a DOL-registered electrician apprenticeship program for each person whose qualifications are used to satisfy the requirements of this Part.

iii. Annual Recertification and Reporting

ABCIL recommends changes to Section 469.70 (Annual Recertification and Reporting). Staff understands that ABCIL recommends that subsections (c)(2)(3) and (5) should be deleted. These subsections require an entity seeking recertification to list the qualified persons who installed charging stations during the reporting year and also to provide a list of current qualified persons. The information required by subsections (c)(2) and (c)(3) is essential to ensure the Commission that the entity continues to allow only qualified persons to install charging stations. Thus, Staff does not recommend deletion of subsections (c)(2) and (c)(3) of Section 469.40. However, Staff believes that these subsections can be improved and recommends changes, as follows:

- 2) A list of all persons who installed, maintained or repaired vehicle charging stations on behalf of the certificate holder during the previous calendar year. For each person, state whether the certificate holder provided the person's qualifications to the Commission with the certificate holder's original application or with a recertification report. If the latter, identify the relevant recertification report for each person by the calendar year which it covered and the date the certificate holder first provided each person's qualifications;
- 3) A list of all qualified persons currently employed by the certificate holder. For each person not listed in response to subsection (c)(2), state when the person began employment and provide for each such person proof of the person's qualifications consistent with Section 486.50(f); A current list of qualified persons and the date the certificate holder provided supporting documentation of qualification for each person. For persons for whom the certificate holder had not previously provided documentation of qualification, the certificate holder shall provide for each person a copy of each DOL certificate of satisfactory completion;

Regarding subsection (c)(5), which requires the recertifying entity to report the number of charging stations that the entity installed during the previous year, Staff believes that this information will aid the Commission and the public in keeping track of the EV industry in Illinois. Thus, Staff does not recommend deletion of subsection (c)(5).

III. CONCLUSION

Staff respectfully requests that the Commission adopt Staff's proposed rule consistent with Staff's recommendations.

Respectfully submitted,

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